

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No.

HARVEY HOLMES and **04 10996 RWZ**
ANNIE HOLMES

Plaintiff,

MAGISTRATE JUDGE RBC

COMPLAINT

V.

VOLVO TRUCKS NORTH
AMERICA, INC., and

ANDCO, INC.

Defendant.

RECEIPT # 56010

AMOUNT \$ 150

SUMMONS ISSUED Y

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY. CLK ADM

DATE 5/18/04

PARTIES

1. Plaintiff Harvey Holmes, is a married individual and a resident of Lowell, Massachusetts and a citizen of the United States.
2. Plaintiff Annie Holmes, is a married individual and a resident of Lowell, Massachusetts and a citizen of the United States.
3. At the times mentioned herein, defendant Volvo Trucks North America, Inc. was a duly organized and existing corporation under the laws of the State of Delaware, maintaining a principal place of business in the State of North Carolina at 7900 National Service Road, Greensboro, North Carolina authorized to do business and doing business in the Commonwealth of Massachusetts with an agent for service of process, CT Corporation, 101 Federal Street, Boston, Massachusetts 02110.

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4. At the times mentioned herein, defendant Andco, Inc. was a duly organized and existing corporation under the laws of the State of Rhode Island engaged and now engages in the retail sale of vehicles at its principal place of business at 170D Amaral Street, Providence Rhode Island. On information and belief, plaintiffs allege that defendant Andco, Inc. is the sales agent of defendant, Volvo Trucks North America, Inc. The agent for service of process for Andco, Inc. is John E. Anderson of 279 Nayatt Road, Barrington, Rhode Island 02806.

JURISDICTION

5. This Court has diversity jurisdiction as the Plaintiffs and the Defendants are citizens of different states and the amount in controversy exceeds \$100,000.00 exclusive of interest and costs, pursuant to 28 U. S. C. 1332.

FACTS

6. This action arises out of a motor vehicle accident which occurred on May 30, 2001 on Route 128 North in Needham, Massachusetts.

COUNT 1 – Product Liability vs. Defendant Volvo Trucks

North America, Inc.

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7. Plaintiff, Harvey Holmes realleges and reavers the allegations of Paragraphs 1 through 6 of this Complaint as if fully set forth herein

8. The defendant Volvo Trucks North America, Inc. manufactured the Volvo model WG64 Tractor Volvo serial number 4V5JC2UF8YN871281, (hereinafter referred to as "truck"), equipped with wheel lug nuts and wheel clamp devices to attach the wheels and the wheel rims to the truck, which, if not properly designed, manufactured, or installed were inherently dangerous to human life.

9. Defendant Volvo Trucks North America, Inc. expected the truck and it particular the left front wheel lug nuts, lug bolts, wheel clamp devices, wheels and wheel rims manufactured by it to reach consumers and users in the condition in which it was manufactured..

10. The truck was defective and created an unreasonably dangerous condition when used as intended.

11. On May 30, 2001 the plaintiff Harvey Holmes was the lawful operator of the truck in the exercise of due care and caution while traveling on Route 128 North, Needham, Massachusetts.

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12. On May 30, 2001, plaintiff Harvey Holmes, acting as an employee of Pool Builders, Inc., was driving the truck on Route 128 North in Needham, Massachusetts when suddenly and without warning the left front wheel detached from the truck, causing the truck to veer sharply and roll over, causing the plaintiff Harvey Holmes serious and grievous injury of both mind and body.

13. Plaintiff Harvey Holmes is informed and believes, and in reliance on that information and belief alleges, that the left front wheel, lug nuts, lug bolts, wheel clamp assembly of the truck was then in the condition existing when defendant Volvo Trucks North America sold and delivered it to defendant Andco, Inc., and in the same condition existing when Plaintiff Harvey Holmes's employer, Pool Builders, Inc. purchased the truck from Defendant Andco, Inc. and the condition of the left front wheel, lug nuts, lug bolts, wheel clamp assembly remained unchanged when plaintiff Harvey Holmes used the truck and sustained injuries while operating the truck..

14. Defendant Volvo Trucks North America, Inc. so carelessly and negligently designed, manufactured, installed, inspected, and sold the truck so as to cause the wheel, lug nuts and clamp assembly to fail to serve its purpose and caused the truck to lose its front left wheel while the truck was being operated.

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15. Defendant Volvo Trucks America, Inc. knew, or with the exercise of ordinary care should have known, that the truck, left front wheel, lug nuts, and clamp assembly installed therein was defective and dangerous to those using the truck for the purpose for which it was intended.

16. Such carelessness and negligence of the defendant Volvo Trucks North America, Inc. proximately caused the plaintiff Harvey Holmes' serious and grievous injuries to his head, neck, spine, chest, right elbow, internal injuries, contusions, fractures, initial quadriplegia, coma, concussions, permanent loss of function, scarring, loss of income all in the past, present, and future.

17. By reason of the injuries so incurred and such negligence and carelessness of the defendant Volvo Trucks North America, Inc. as alleged above, plaintiff Harvey Holmes was in a coma for six weeks, compelled to secure the services of doctors, hospitals, and rehabilitation facilities at an expense currently in excess of \$130,000.00, and he will be required to secure additional services in the future for care and treatment of the injuries.

18. When plaintiff Harvey Holmes sustained these injuries the truck's left front wheel, lug nuts, lug bolts, wheel clamp assembly were in a defective condition not observable by plaintiff Harvey Holmes who relied on the duty of the defendant Volvo Trucks North America, Inc. to deliver the truck at the time of the sale in a condition fit for use for the purpose intended. The breach of that duty and the defective condition proximately caused the plaintiff Harvey Holmes's injuries.

WHEREFORE, the plaintiff Harvey Holmes demands judgment against the defendant, Volvo Trucks North America, Inc. for damages in excess of \$1,000,000.00, interest and costs, and for such other and further relief as this Honorable Court deems just.

PLAINTIFFS FURTHER DEMAND A TRIAL BY JURY OF ALL ISSUES SO TRIABLE

COUNT II – Product Liability vs. Andco, Inc.

Plaintiff Harvey Holmes realleges and reavers the allegations of paragraphs 1 through 18 of the Complaint as if fully set forth herein.

19. Defendant Andco, Inc. sold the truck to Pool Builders, Inc. of 810 Providence Highway, Norwood, Massachusetts 02062.

20. Defendant Andco, Inc. expected the truck to reach Pool Builders, Inc. and agents, servants, employees, and assigns of Pool Builders, Inc. in the condition in which it was sold.

21. Plaintiff Harvey Holmes is informed and believes, that the truck's left front wheel, lug nuts, lug bolts and wheel clamp assembly were, on May 30, 2001, then in

the condition existing when defendant Andco, Inc. sold the vehicle to and in the same condition existing when Plaintiff Harvey Holmes's employer, Pool Builders, Inc. purchased the truck from Defendant Andco, Inc. and the condition of the left front wheel, lug nuts, lug bolts and wheel clamp assembly remained unchanged when plaintiff Harvey Holmes used the truck and sustained injuries while operating the truck.

22. On May 30, 2001 the plaintiff Harvey Holmes was the lawful operator of the truck in the exercise of due care and caution while traveling on Route 128 North, Needham, Massachusetts.

23. On May 30, 2001, plaintiff Harvey Holmes, acting as an employee of Pool Builders, Inc., was driving the truck on Route 128 North in Needham, Massachusetts when suddenly and without warning the left front wheel detached from the truck, causing the truck to veer sharply and roll over, causing the plaintiff Harvey Holmes serious and grievous injury of both mind and body.

24. Defendant Andco, Inc. so carelessly and negligently installed, inspected, and sold the truck so as to cause the wheel, lug nuts and clamp assembly to fail to serve its purpose and caused the truck to lose its front left wheel while the truck was being operated.

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25. Defendant Andco, Inc. knew, or with the exercise of ordinary care should have known, that the truck and the lug nuts and wheel clamp assembly installed therein was defective and unreasonably dangerous to those using the truck for the purpose for which it was intended.

26. As a result of the accident the plaintiff Harvey Holmes suffered serious and grievous injuries to his head, neck, spine, chest, right elbow, internal injuries, contusions, fractures, initial quadriplegia, coma, concussions, permanent loss of function, scarring, loss of income all in the past, present and future.

27. By reason of the injuries so incurred and such negligence and carelessness of the defendant Andco, Inc. as alleged above, plaintiff Harvey Holmes was in a coma for six weeks, compelled to secure the services of doctors, hospitals, and rehabilitation facilities at an expense currently in excess of \$130,000.00, and he will be required to secure additional services in the future for care and treatment of the injuries.

28. When plaintiff Harvey Holmes sustained these injuries the truck's left front wheel, lug nuts, lug bolts, and wheel clamp assembly were in a defective condition not observable by plaintiff who relied on the duty of Andco, Inc. to deliver the truck at the time of the sale in a condition fit for use for the purpose intended. The breach

of that duty and the defective condition proximately caused the plaintiff Harvey Holmes's injuries.

WHEREFORE, the plaintiff Harvey Holmes demands judgment against the defendant, Andco, Inc., for damages in excess of \$1,000,000.00, interest and costs, and for such other and further relief as this Honorable Court deems just.

PLAINTIFFS FURTHER DEMAND A TRIAL BY JURY OF ALL ISSUES SO TRIABLE

COUNT III – Breach of Warranty vs. Defendant Volvo Trucks North America, Inc.

Plaintiff Harvey Holmes realleges and reavers the allegations of paragraphs 1 through 28 of the Complaint as if fully set forth herein.

29. Defendant Volvo Trucks North America, Inc. by and through the sale of the truck, expressly and impliedly warranted that the truck was fit for the purpose for which it was intended.

30. Plaintiff Harvey Holmes made use of the truck as alleged herein in reliance on the express and implied warranties.

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31. The express and implied warranties were breached by the breaking of the lug nuts and wheel clamp assembly from the wheel on May 30, 2001, causing the vehicle to roll over.

32. As a direct result of Defendant Volvo Trucks of North America, Inc.'s breaches of warranties, plaintiff Harvey Holmes suffered serious injuries to his neck, head, spine, chest, right elbow, internal injuries, contusions, fractures, initial quadriplegia, coma, concussions, permanent loss of function, scarring, loss of income all in the past, present, and future.

33. As a direct result of the breaches of warranties by the defendant Volvo Trucks North America, Inc. and the injuries proximately caused thereby, as alleged above, plaintiff Harvey Holmes was compelled to and did secure the services of doctors, hospitals, and rehabilitation facilities at an expense currently in excess of \$130,000.00, and will be required to secure additional services in the future for care and treatment of the injuries.

WHEREFORE, the plaintiff Harvey Holmes demands judgment against the defendant Volvo Trucks North America, Inc., for damages in excess of \$1,000,000.00 interest and costs, and for such other and further relief as this Honorable Court deems just.

PLAINTIFFS FURTHER DEMAND A TRIAL BY JURY OF ALL ISSUES SO TRIABLE

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COUNT VI – Breach of Warranty vs. Defendant

Andco, Inc.

Plaintiff Harvey Holmes realleges and reavers the allegations of paragraphs 1 through 33 of the Complaint as if fully set forth herein.

34. Defendant Andco, Inc. by and through the sale of the truck, expressly and impliedly warranted that the truck was fit for the purpose for which it was intended.

35. Plaintiff Harvey Holmes made use of the truck as alleged herein in reliance on the express and implied warranties.

36. The express and implied warranties were breached by the breaking of the lug nuts and wheel clamp assembly from the wheel on May 30, 2001, causing the vehicle to roll over.

37. As a direct result of Defendant Andco, Inc.'s breaches of warranties, plaintiff Harvey Holmes suffered serious injuries to his neck, head, spine, chest, right elbow, internal injuries, contusions, fractures, initial quadriplegia, coma, concussions, permanent loss of function, scarring, loss of income all in the past, present, and future.

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38. As a direct result of the breaches of warranties by the defendant Andco, Inc. and the injuries proximately caused thereby, as alleged above, plaintiff Harvey Holmes was compelled to and did secure the services of doctors, hospitals, and rehabilitation facilities at an expense currently in excess of \$130,000.00, and will be required to secure additional services in the future for care and treatment of the injuries.

WHEREFORE, the plaintiff Harvey Holmes demands judgment against the defendant, Andco, Inc., for damages in excess of \$1,000,000.00 interest and costs, and for such other and further relief as this Honorable Court deems just.

PLAINTIFFS FURTHER DEMAND A TRIAL BY JURY OF ALL ISSUES SO TRIABLE

COUNT V – Negligence of Defendant Volvo Trucks North

America, Inc.

Plaintiff Harvey Holmes realleges and reavers the allegation of paragraphs 1 through 38 of the Complaint as if fully set forth herein.

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39. While plaintiff Harvey Holmes was properly operating the truck on May 30, 2001 the left front wheel did become detached from the truck and caused serious injuries to the plaintiff Harvey Holmes.

40. Plaintiffs' injuries and ensuing damages are the direct and proximate result of negligence on the part of defendant Volvo Trucks North America, Inc. by not properly affixing the left front wheel to the truck and in not properly tightening the lug nuts on the left front tire and not assuring that the clamp assembly on the left front wheel performed up to the specific purpose intended, in putting on the market a defective product, in failing to inspect the left front wheel prior to placing the truck on the market, which it knew or by the exercise of ordinary care should have known that on account of improperly affixing the left front wheel to the truck and the defect in the left front wheel lug nuts and clamp assembly was dangerous and likely to cause serious injury to a user of the truck.

41. Defendant Volvo Trucks North America, Inc., controlled and exclusively supervised the manufacture of the truck and the affixing of the left front wheel to the truck and retained the left front wheel, lug nut, and clamp assembly in its exclusive control during the period of manufacture.

42. The left front wheel suddenly and without warning and due to no external cause broke off from the truck as the plaintiff Harvey Holmes was traveling on the interstate highway. By application of the doctrine of res ipsa loquitur, defendant manufacturer, Volvo Trucks North America, Inc. was negligent with respect to the

manufacture, handling, inspection, and distribution of the truck, Volvo model WG64 serial number 4V5JC2UF8YN871281.

43. Defendant Volvo Trucks North America, Inc. was negligent in the manufacturing of the truck and failed to use due care in its construction and testing of the same and the material of which it was made. The truck was constructed for the purpose of traveling on ordinary highways, and for that purpose it was necessary that good, strong, and proper materials should be used in its wheels, lug nuts, lug bolts, wheel clamp assembly and that such materials should be sufficiently inspected and tested to show that the wheels, lug nuts, lug bolts, and wheel clamp assemblies were strong, durable, installed correctly, and safe. Defendant Volvo Trucks North America, Inc. negligently and without making proper tests and inspection, put wheels on the truck that were improperly secured to the truck, and parts of which were inferior, unsuitable, and unsafe.

44. As a proximate cause, plaintiff Harvey Holmes was injured and has incurred great mental and physical pain and suffering as a result of those injuries, and will incur pain and suffering in the future. Among the injuries incurred were various fractures, contusions, bruises, internal injuries, initial quadriplegia, coma, concussion, scarring, permanent loss of function. Medical expenses for his treatment currently exceed \$130,000.00, and he will incur further medical expense in the future. Plaintiff Harvey Holmes also incurred loss of earnings and due to his injuries he will be permanently disabled, and he will not be able to work again.

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45. The losses complained of by Harvey Holmes are both continuing and permanent in nature, and plaintiff Harvey Holmes will suffer from said losses in the future.

WHEREFORE, the plaintiff Harvey Holmes demands judgment against the defendant, Volvo Trucks North America, Inc., for damages in excess of \$1,000,000.00, interest and costs, and for such other and further relief as this Honorable Court deems just.

PLAINTIFFS FURTHER DEMAND A TRIAL BY JURY OF ALL ISSUES SO TRIABLE

COUNT VI Negligence of Andco, Inc.

Plaintiff Harvey Holmes realleges and reavers the allegations of paragraphs 1 through 45 of the Complaint as if fully set forth therein.

46. Defendant Andco, Inc., the seller of the truck to Pool Builders, Inc., was negligent at and immediately prior to the time the truck was sold to Pool Builders, Inc. by representing that the truck was in good condition and a good and marketable vehicle. Defendant Andco, Inc. was negligent in not ensuring that the left front wheel lug nuts were attached properly and that the left front wheel assembly was in good

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working order. Defendant Andco, Inc. was negligent by selling a vehicle in a defective and dangerous condition.

47. Defendant Andco, Inc. sold the truck to plaintiff Harvey Holmes's employer Pool Builders, Inc., in a dangerous and defective condition and, as such, was dangerous to persons and property when in operation on the public highways, and if defendant Andco, Inc. had inspected the truck and the defective wheel, lug nuts, lug bolts and wheel clamp assembly, defendant Andco, Inc. would have known the conditions thereof, but defendant Andco, Inc. failed and neglected to inspect same.

48. Defendant Andco, Inc., the seller of the truck to Pool Builders, Inc., was negligent in failing to inspect the left front wheel properly prior to the sale, and in failing to properly affix the wheel to the truck, and in failing to inspect the manner in which the wheel had been affixed to the truck.

49. Plaintiffs' injuries are the direct and proximate result of negligence on the part of defendant Andco, Inc. the seller of the truck which was not fit for its intended use.

50. As a result plaintiff Harvey Holmes was injured and has incurred great mental and physical pain and suffering as a result of those injuries, and will incur pain and suffering in the future. Among the injuries incurred were various fractures, contusions, bruises, internal injuries, initial quadriplegia, coma, concussion, scarring,

permanent loss of function. Medical expenses for his treatment currently exceed \$130,000.00, and he will incur further medical expense in the future. Plaintiff Harvey Holmes also incurred loss of earnings and due to his injuries he will be permanently disabled, and he will not be able to work again.

51. The losses complained of by Harvey Holmes are both continuing and permanent in nature, and plaintiff Harvey Holmes will suffer from said losses in the future.

WHEREFORE, the plaintiff Harvey Holmes demands judgment against the defendant Andco, Inc., for damages in excess of \$1,000,000.00, interest and costs, and for such other and further relief as this Honorable Court deems just.

PLAINTIFFS FURTHER DEMAND A TRIAL BY JURY OF ALL ISSUES SO TRIABLE

COUNT VII – Loss of Consortium vs. Volvo Trucks North America, Inc.

Plaintiff Annie Holmes realleges and reavers the allegations of paragraphs 1 through 51 of the Complaint as if fully set forth therein.

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52. At the time of the accident, May 30, 2001, Plaintiffs Annie Holmes and Harvey Holmes were married. They continue to remain married.

53. As a direct and proximate result of the negligence of the Defendant Volvo Trucks North America, Inc. in causing the injuries to her husband, plaintiff Harvey Holmes, plaintiff Annie Holmes did suffer the loss of her husband's services, love, affection, society, and companionship.

54. Plaintiff Annie Holmes spent much time, expense, and emotion while traveling to various hospitals and facilities while plaintiff Harvey Holmes as an In-Patient from May 30, 2001 until his discharge home on August 31, 2001.

55. Upon plaintiff Harvey Holmes's return to his residence, plaintiff Annie Holmes was forced to make herself available to transport her husband to all his appointments and to aid in his recuperation and rehabilitation.

56. The losses complained of by plaintiff Annie Holmes are continuing in nature and she will be caring for her husband in the future.

WHEREFORE, the plaintiff Annie Holmes demands judgment against the defendant Volvo Trucks North America, Inc., for damages in excess of \$100,000.00, interest and costs, and for such other and further relief as this Honorable Court deems just.

PLAINTIFFS FURTHER DEMAND A TRIAL BY JURY OF ALL ISSUES SO TRIABLE

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COUNT VIII – Loss of Consortium vs. Andco, Inc.

Plaintiff Annie Holmes realleges and reavers the allegations of paragraphs 1 through 56 of the Complaint as if fully set forth therein.

57. At the time of the accident, May 30, 2001, Plaintiffs Annie Holmes and Harvey Holmes were married. They continue to remain married.

58. As a direct and proximate result of the negligence of the Defendant Andco, Inc. in causing the injuries to her husband, plaintiff Harvey Holmes, plaintiff Annie Holmes did suffer the loss of her husband's services, love, affection, society, and companionship.

59. Plaintiff Annie Holmes spent much time, expense, and emotion while traveling to various hospitals and facilities while plaintiff Harvey Holmes as an In-Patient from May 30, 2001 until his discharge home on August 31, 2001.

60. Upon plaintiff Harvey Holmes's return to his residence, plaintiff Annie Holmes was forced to make herself available to transport her husband to all his appointments and to aid in his recuperation and rehabilitation.

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61. The losses complained of by plaintiff Annie Holmes are continuing in nature and she will be caring for her husband in the future.

WHEREFORE, the plaintiff Annie Holmes demands judgment against the defendant Andco, Inc., for damages in excess of \$100,000.00, interest and costs, and for such other and further relief as this Honorable Court deems just.

PLAINTIFFS FURTHER DEMAND A TRIAL BY JURY OF ALL ISSUES SO TRIABLE

Harvey Holmes and Annie Holmes, Plaintiffs
By Their Attorney,



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